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MEMORANDUM

TO: Docket Control

2012 NOV 20 P 12:04

FROM: Steven M. Olea  
Director  
Utilities Division

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

DATE: November 20, 2012

RE: IN THE MATTER OF THE APPLICATION OF PREFERRED LONG DISTANCE, INC. FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-04308A-12-0118)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

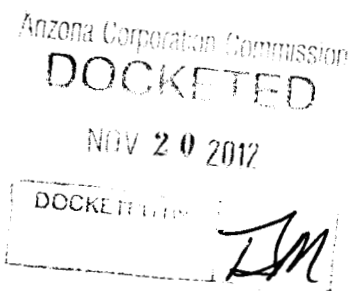
- Resold Long Distance Telecommunications Services
- Resold Local Exchange Telecommunications Services
- Facilities-Based Local Exchange Telecommunications Services

Staff is recommending approval of the Application with conditions.

SMO:PJG:red

Originator: Pamela J. Genung

Attachment: Original and Thirteen copies



SERVICE LIST FOR: PREFERRED LONG DISTANCE, INC.  
DOCKET NO. T-04308A-12-0118

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STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

PREFERRED LONG DISTANCE, INC  
DOCKET NO. T-04308A-12-0118

IN THE MATTER OF THE APPLICATION OF PREFERRED LONG DISTANCE, INC. FOR  
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE  
RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE AND  
FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

NOVEMBER 20, 2012

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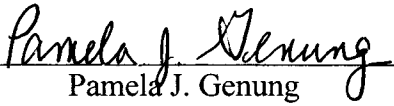
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## **ATTACHMENT**

FCC Slamming Complaints Against Preferred Long Distance, Inc. ....	Attachment 1
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## STAFF ACKNOWLEDGMENT

The Staff Report for Preferred Long Distance, Inc., Docket No. T-04308A-12-0118, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of the Preferred Long Distance, Inc. Application for a Certificate of Convenience and Necessity to provide Resold Long Distance, Resold Local Exchange, and Facilities-Based Local Exchange Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.

  
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Pamela J. Genung  
Public Utilities Analyst V

## **1. INTRODUCTION**

On March 29, 2012, Preferred Long Distance, Inc. (“PLD” or “Applicant” or “Company”) filed an Application for a Certificate of Convenience and Necessity (“CC&N”) to provide resold long distance, resold local exchange, and facilities-based local exchange telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission (“Commission”) for a determination that its proposed services should be classified as competitive. On March 29, 2012, PLD submitted a proposed tariff for the services it is requesting the authority to provide.

On May 21, 2012, Staff issued its First Set of Data Requests to PLD. Responses to Staff’s First Set of Data Requests and four replacement pages to PLD’s proposed tariff were received from the Applicant on May 29, 2012. On June 29, 2012, Staff issued its Second Set of Data Requests. Responses to Staff’s Second Set of Data Requests were received from PLD on July 17, 2012. On August 7, 2012, Staff issued its Third Set of Data Requests. Responses to Staff’s Third Set of Data Requests were received from PLD on September 13, 2012.

Staff’s review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff’s analysis also considers whether the Applicant’s services should be classified as competitive and if the Applicant’s initial rates are just and reasonable.

## **2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

The Applicant is currently providing competitive local exchange and/or interexchange services in eighteen (18)<sup>1</sup> States. Staff contacted the Public Utility Commissions in nine (9) States to determine if PLD is certificated or registered to provide competitive local exchange and interexchange telecommunications services in the States/Jurisdictions listed by the Applicant. Staff also inquired whether there were any consumer complaints filed against the Applicant. The information Staff obtained indicates that PLD is authorized to provide local exchange and interexchange services in at least seven (7) of the States/Jurisdictions contacted by Staff. Staff obtained the following complaint related information during its research:

- The State of Wisconsin reported 4 alleged slamming related complaints (3 concerning long distance service and 1 concerning local service) over the last 12 months. All 4 complaints have now been resolved and closed.
- The State of Oregon reported 14 alleged complaints for unauthorized switch of service (slamming) over the last 12 months. Two of the 14 complaints are still open.
- The State of Indiana reported 19 alleged complaints (16 slamming related and 3

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<sup>1</sup> California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Minnesota, Missouri, Nevada, New Mexico, North Carolina, Ohio, Oregon, Texas, Utah, Washington, and Wisconsin.

“high-bill” related) over the last 12 months. All 19 complaints have now been resolved and closed.

In response to Staff Data Request PJG 2.2 regarding the above-mentioned complaints, the Applicant stated that all issues were resolved and no further regulatory inquiry or action was taken or deemed necessary. PLD also acknowledges that despite its constant, affirmative scrutiny of independent third party verifications and compliant account transfer procedures, there are instances where inquiries and complaints do occur, consistent with the experience of all telecommunications service providers.

In its response to Staff Data Request PJG 2.2, the Applicant has also stated the following:

*“Preferred is one of the few carriers employing live, rather than automated, independent third party verification and voluntarily imposes an obligation on to its third party verifier to place an immediate callback to the customer. This extra procedure is costly and time sensitive, but has dramatically reduced unauthorized account transfers allegations. Preferred notes that the number of inquiries and complaints has decreased dramatically in 2012 as a result of its continued efforts to mitigate the potential for complaints.”*

The three members of the senior management team average over eighteen (18) years experience each in the telecommunications industry. PLD indicated in its Application that its employees maintain an average of four years of telecommunications experience.

In its Application, PLD indicated that it proposes to provide local exchange service and interexchange service using one or more of the following means:

1. Utilizing combinations of network elements, ancillary functions and features leased from CenturyLink;
2. Under a commercial agreement with CenturyLink; or
3. Via resale, utilizing the networks of underlying carriers.

The Applicant also indicated that it has no plans to purchase or construct its own facilities for the provision of service in the near future.

PLD also stated in its Application that it plans to provide customer service to its Arizona subscribers from its California customer service centers. The Applicant does not plan to maintain employees in Arizona. In response to Staff Data Request PJG 2.1, PLD maintains a dedicated in-house customer service organization to support all subscribers. PLD stated that it employs trained and experienced individuals responsible for direct coordination with CenturyLink for resolution of technical issues.

Based on the above information, Staff believes PLD possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

The Applicant provided unaudited financial statements of Preferred Long Distance, Inc. for the two years ending December 31, 2010 and December 31, 2011. The financial statements for year ending 2010 list total assets of \$1,442,429, total equity of \$390,844 and net income of \$55,456. The financial statements for year ending 2011 list total assets of \$1,258,077, total equity of \$377,845, and net income of \$41,000. The Applicant did not provide notes related to the financial statements.

The Applicant stated in its proposed tariff (reference Sections 2.5.4 and 2.5.5 of PLD's proposed Arizona C.C.Tariff No. 1) that it may require advances, deposits and prepayments from its customers to safeguard its interests or should the customer be unable to meet certain credit requirements representing prior telephone utility service or becomes delinquent in making payments after establishing service.

The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLC") requirements are \$10,000 for resold long distance (for those resellers who collect advances, prepayments, deposits, or are offering prepaid calling services), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$135,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum performance bond or ISDLC amount. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

Staff recommends that the Applicant procure either a performance bond or an ISDLC equal to \$135,000. The minimum performance bond or ISDLC amount of \$135,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or ISDLC amount should be increased in increments of \$67,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of the performance bond or ISDLC amount. If the Applicant desires to discontinue service, it must file an Application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an Application to discontinue service. Failure to meet this requirement could result in forfeiture of the Applicant's performance bond or ISDLC.

Staff further recommends that proof of the above mentioned performance bond or ISDLC be docketed within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. Staff also recommends that the Applicant notify the Commission through a compliance filing when it begins serving customers. The original performance bond or ISDLC should be filed with the Commission's Business Office and copies



of the performance bond or ISDLC with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Applicant's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.

#### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company indicating that its fair value rate base is zero. Accordingly, the Company's fair value rate base is too small to be useful in a fair value analysis. PLD has submitted proposed tariff pages reflecting the rates that PLD will be charging for its interexchange and local exchange services. PLD has also provided additional rate comparison information of other competitive local exchange carriers in the State of Arizona. Staff has reviewed the proposed rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

#### **5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

Issues related to the provision of Local Exchange service are discussed below.

### *5.1 Number Portability*

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

### *5.2 Provision of Basic Telephone Service and Universal Service*

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

### *5.3 Quality of Service*

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest d/b/a CenturyLink (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

### *5.4 Access to Alternative Local Exchange Service Providers*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

### 5.5 911 Service

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission ("FCC") 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

### 5.6 Custom Local Area Signaling Services

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

## 6. REVIEW OF COMPLAINT INFORMATION

The Applicant has not had an Application for authority to provide service denied in any state. The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions filed against PLD through April 10, 2012. In addition, Consumer Services reports that PLD is in good standing with the Corporations Division of the Commission.

The Applicant indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years. The Applicant also indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any informal complaints.

A search of the FCC's website revealed thirty-six (36) informal complaint proceedings for slamming, all of which the FCC granted for the complainants. Attachment 1 is a listing of the FCC complaints and Order numbers. In twenty-three (23) out of the thirty-six (36) complaints, the FCC consistently stated the following:

*"We have reviewed the Third Party Verifications ("TPVs") PLD submitted with its responses, and we find that in each case during the course of the TPV, the verifier recited a telephone number presumably associated with the business. However, our rules require that the TPV specifically elicit the "telephone numbers to be switched," rather than merely verifying numbers associated with a business or residence, or for what purpose the numbers are used.<sup>2</sup> As we emphasized in the Fourth Report and Order, "any description of the carrier*

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<sup>2</sup> See 47 C.F.R. § 64.1120(c) (3)(iii).

*change transaction....shall not be misleading.”<sup>3</sup> We find that PLD has failed to produce clear and convincing evidence that Complainant’s authorized carrier changes.<sup>4</sup> We find that PLD’s actions resulted in unauthorized changes in Complainant’s telecommunications service providers and we discuss PLD’s liability below.”*

Taking into consideration PLD’s TPV compliance issues at the FCC and the complaints identified earlier in this report for the States of Wisconsin, Oregon, and Indiana, Staff requested and PLD provided its marketing and TPV vendor company names, addresses, and telephone numbers.<sup>5</sup> PLD also stated that it relies on its in-house sales and marketing team. Staff verified the TPV vendor company information, provided by PLD, through an internet search of both companies. In response to Staff’s Third Set of Data Requests, at PJG 1.1, the Applicant stated that it has amended its TPV script to now capture each telephone number associated with a prospective account transfer. PLD also indicated that it has changed its procedures to obtain full account information from the customer during initial contact up to and including telephone bills in all cases that are used in making the TPV.

In twenty-one (21) of the twenty-three (23) complaints, the FCC ordered PLD to remove all charges incurred for service provided to complainants for the thirty (30) days after the alleged unauthorized change in accordance with the FCC’s liability rules.<sup>6</sup> In the remaining two (2) complaints, the FCC ordered PLD to forward to the authorized carriers an amount equal to 150% of all charges paid by the subscriber to PLD.<sup>7</sup>

In seven (7) additional complaints addressed by the FCC, the FCC found that in each case “PLD’s verifier failed to obtain separate authorization for each service being sold, as required by our rules.”<sup>8</sup> In all seven complaints, the FCC concluded that PLD failed to produce clear and convincing evidence of a valid authorized carrier change by the complainant. The FCC ordered PLD to remove all charges incurred for service provided to complainants for the thirty (30) days after the alleged unauthorized change in accordance with the FCC’s liability rules.

In response to Staff’s Third Set of Data Requests, at PJG 1.1, PLD stated that it has since amended its scripting policies by specifically verifying election of each service separately to ensure compliance. The Applicant provided detailed explanations concerning its research into the complaints addressed by the FCC. PLD also provided the following explanation of actions that it has taken to alleviate the number of slamming complaints it has been receiving at the federal level:

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<sup>3</sup> See 47 C.F.R. § 64.1120(c) (3)(iii) and Fourth Report and Order, 23 FCC Rcd 493 (2008).

<sup>4</sup> See 47 C.F.R. § 64.1150(d).

<sup>5</sup> Responses to Staff Data Requests PJG 2.3 and PJG 2.5.

<sup>6</sup> See 47 C.F.R. § 64.1160(b).

<sup>7</sup> See 47 C.F.R. § 64.1170(b).

<sup>8</sup> See 47 C.F.R. § 64.1120(b) and 47 C.F.R. § 64.1120(c) (3)(iii).

*"Though slamming complaints have constituted isolated occurrences, the recent spate of FCC Orders dating back to 2010 has caused the Company to review its TPV and associated practices governing collection of all telephone numbers in all instances before the TPV is conducted to make amendments in these practices. The Company has adopted changes in both to maintain the strictest compliance with FCC rules. Scripts have been amended to ensure compliance. Additional processes have been put in place to avoid transferring service for any telephone number that is not explicitly verified accurately. And measures have been addressed with Customer Service supervisors and staff to accommodate customers where they are disputing the transfer of service, including playing the TPV recording as soon as it is available and investigating the true nature of the complaint."*<sup>9</sup>

Based on the responses provided by PLD, Staff believes that the actions taken by the Applicant are satisfactory in PLD's quest to alleviate the recent number of slamming complaints that the Applicant has been receiving at the federal level, in addition to those received at the state level. However, because of the Applicant's history of slamming and cramming violations in other jurisdictions, Staff believes that as a condition of approval of its CC&N to the extent PLD is found to have engaged in slamming and cramming in Arizona, the Company shall be subject to such sanctions and/or penalties, including fines and/or revocation of its CC&N, as determined appropriate by the Commission, after a hearing if requested by the Company.

## **7. COMPETITIVE SERVICES ANALYSIS**

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

### **7.1 Competitive Services Analysis for Local Exchange Services**

#### **7.1.1 A description of the general economic conditions that exist, which make the relevant market for the service one that is competitive.**

The statewide local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service in areas previously served only by ILECs. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, will have to compete with those existing companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and Voice over the

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<sup>9</sup> Response to Staff's Third Set of Data Requests at PJG 1.3.

Internet Protocol (“VoIP”) service providers. This may also be the case in areas served by independent ILECs.

**7.1.2 The number of alternative providers of the service.**

CenturyLink and various independent ILECs provide local exchange service in Arizona. CLECs and local exchange resellers are also providing local exchange service. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and VoIP service providers. This may also be the case in portions of the independent ILECs’ service territories.

**7.1.3 The estimated market share held by each alternative provider of the service.**

CenturyLink and CLECs are the primary providers of local exchange service in CenturyLink’s Service territories. Independent ILECs are the primary providers of local exchange service in their service territories.

**7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

PLD does not have any affiliates that are alternative providers of local exchange service in Arizona.

**7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

ILECs have the ability to offer the same services that the Applicant has requested the authority to provide in their respective service territories. Similarly, many of the CLECs, local exchange service resellers, wireless carriers and VoIP service providers also offer substantially the same services.

**7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories. Competition exists in most urban markets, but to a lesser degree in rural areas of Arizona.

- b. One in which new entrants will be dependent upon ILECs and other CLECs:
  - 1. To terminate traffic to customers.
  - 2. To provide essential local exchange service elements until the entrant's own network has been built.
  - 3. For interconnection.
- c. One in which existing ILECs and CLECs have had an existing relationship with their customers that the Applicant will have to overcome if it wants to compete in the market and one in which the Applicant will not have a history in the Arizona local exchange service market.
- d. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

## *7.2 Competitive Services Analysis for Interexchange Services*

### **7.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that is competitive.**

The statewide interexchange market that the Applicant seeks to enter is one in which numerous facilities-based interexchange carriers and resellers of interexchange service have been authorized to provide service throughout the State. The market the Applicant seeks to enter is also served by wireless carriers and VoIP providers. The Applicant will be a new entrant in this market and, as such, will have to compete with those existing companies in order to obtain customers.

### **7.2.2 The number of alternative providers of the service.**

There are a large number of facilities-based interexchange carriers and resellers providing interexchange service throughout Arizona. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

### **7.2.3 The estimated market share held by each alternative provider of the service.**

Facilities-based interexchange carriers, interexchange service resellers, independent ILECs, CLECs, wireless carriers and VoIP providers all hold a portion of the interexchange market.

**7.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

PLD does not have any affiliates that are alternative providers of interexchange service in Arizona.

**7.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

Both facilities-based interexchange carriers and interexchange service resellers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the ILECs and CLECs offer similar interexchange services. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

**7.2.6 Other indicators of market power which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.
- d. One in which the share of the market held by wireless carriers has increased over time, while that held by wireline carriers has declined.

**8. RECOMMENDATIONS**

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.



*8.1 Recommendations on the Application For A CC&N*

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

10. That Preferred Long Distance Inc.'s Application be approved based upon its representation to the Commission that Preferred Long Distance, Inc. will be providing local exchange service directly to end-users in Arizona. Should Preferred Long Distance, Inc. not provide service directly to end-user customers, it shall notify the Commission and file for cancellation of its CC&N; and

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
2. The Applicant shall:
  - a. Procure either a performance bond or an ISDLC equal to \$135,000. The minimum performance bond or ISDLC amount of \$135,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or ISDLC amount should be increased in increments of \$67,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of the performance bond or ISDLC amount.
  - b. Docket proof of the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Applicant's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.
  - c. Notify the Commission through a compliance filing when it begins serving customers.

3. Abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).
4. For a period of three (3) years, provide a list of the number of complaints filed against Preferred Long Distance, Inc. in other States/Jurisdictions and at the FCC, and the resolution of those complaints. In addition, the Applicant will provide a detailed explanation of the actions and/or changes in operations that Preferred Long Distance, Inc. has implemented to reduce or eliminate future complaints. The Applicant will begin providing this information six (6) months after it begins serving its first customer in Arizona. This information will be provided on a semi-annual basis as a compliance filing. State laws prohibit unauthorized carrier changes (slamming) and unauthorized carrier charges (cramming). See, e.g. Title 14, Articles 19 and 20 of the Arizona Administrative Code. Both Articles 19 and 20 include provisions subjecting violators to such enforcement actions and penalties as authorized by Arizona law. To the extent Preferred Long Distance, Inc. is found to have slamming and cramming complaints in Arizona and those complaints are resolved in the customers favor, the Company shall be subject to such sanctions and/or penalties, including fines and/or revocation of its CC&N, as determined appropriate by the Commission, after a hearing if requested by the Company.

8.2 *Recommendation on the Applicant's Petition to Have Its Proposed Services Classified as Competitive*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange service market where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

Attachment 1

FCC Slamming Complaints Against Preferred Long Distance, Inc.

<u>Informal Complaint No.</u>	<u>Date Complaint Filed</u>	<u>FCC Order No.</u>	<u>Order Release Date</u>
09-S0296111	05/12/09	DA 09-1689	07/31/09
10-S0297610	03/08/10	DA 10-1637	08/31/10
11-S3106034	04/28/11	DA 12-1242	08/02/12
11-S3218877	07/28/11	DA 12-1242	08/02/12
11-S3247492	09/22/11	DA 12-1242	08/02/12
11-S3259759	10/21/11	DA 12-1242	08/02/12
12-S3353245	03/19/12	DA 12-1241	08/02/12
10-R2658295S	06/14/10	DA 12-1255	08/03/12
10-S2726918	07/26/10	DA 12-1255	08/03/12
11-S3134372	06/03/11	DA 12-1255	08/03/12
11-S3150573	07/05/11	DA 12-1255	08/03/12
11-S3218915	07/18/11	DA 12-1255	08/03/12
12-S3353014	03/19/12	DA 12-1255	08/03/12
10-S2749689	08/10/10	DA 12-1254	08/03/12
11-S003135	04/13/11	DA 12-1254	08/03/12
11-S003178	07/13/11	DA 12-1254	08/03/12
11-S3105915	02/11/11	DA 12-1254	08/03/12
11-S3197859	08/11/11	DA 12-1254	08/03/12
11-S3218846	07/27/11	DA 12-1254	08/03/12
11-S3218864	08/02/11	DA 12-1254	08/03/12
11-S3218890	07/20/11	DA 12-1254	08/03/12
11-S3227030	09/14/11	DA 12-1254	08/03/12
11-S3286476	11/28/11	DA 12-1254	08/03/12
11-S3287268	11/16/11	DA 12-1254	08/03/12
12-S003307	01/10/12	DA 12-1254	08/03/12
12-S003308	01/10/12	DA 12-1254	08/03/12
12-S3309576	01/13/12	DA 12-1254	08/03/12
12-S3321288	02/01/12	DA 12-1254	08/03/12
12-S3327086	02/09/12	DA 12-1254	08/03/12
12-S3334393	02/14/12	DA 12-1254	08/03/12
12-S3373425	04/16/12	DA 12-1254	08/03/12
12-S3399206	05/04/12	DA 12-1254	08/03/12
12-S3409767	05/21/12	DA 12-1254	08/03/12
12-S3413396	06/01/12	DA 12-1254	08/03/12
11-S3114711	05/02/11	DA 12-1253	08/03/12
11-S3218818	07/22/11	DA 12-1253	08/03/12